

Treaty between the Federal Republic of Germany and the Republic of Colombia on the promotion and reciprocal protection of capital investments

THE FEDERAL REPUBLIC OF GERMANY

AND

THE REPUBLIC OF COLOMBIA,

ENCOURAGED by the desire to intensify economic collaboration between the two States,

FOR THE PURPOSE of creating favorable conditions for capital investments by nationals or companies of one State in the territory of the other State, and

RECOGNIZING that the reciprocal encouragement and protection of such capital investments can stimulate private economic initiative and increase the welfare of the two peoples,

HAVE AGREED AS FOLLOWS:

Article 1.

Each Contracting Party shall permit in its territory, in accordance with its legal provisions, investments of capital of nationals or companies of the other Contracting Party, shall promote them if possible, and shall treat capital investments fairly and equitably in each case.

Article 2.

(1) Each Contracting Party shall not subject in its territory investments of capital owned or influenced by nationals or companies of the other Contracting Party to treatment less favorable than that accorded to investments of capital of its own nationals and companies or to investments of capital of nationals and companies of third States.

(2) Each Contracting Party shall not subject in its territory nationals or companies of the other Contracting Party as regards their activity in connection with capital investments to treatment less favorable than that accorded to its own nationals and companies or to nationals and companies of third States.

Article 3.

(1) Capital investments of nationals or companies of one of the Contracting Parties shall enjoy in the territory of the other Contracting Party full protection and security.

(2) Capital investments of nationals or companies of one of the Contracting Parties may not be expropriated in the territory of the other Contracting Party except for reasons of public utility and against compensation. The compensation, which shall correspond to the value of the capital investments expropriated, shall be effectively realizable, freely transferable and paid without delay. At the latest at the time of expropriation, measures must have been duly taken to fix and pay the compensation. The lawfulness of the expropriation measure and the amount of compensation must be verifiable in ordinary legal proceedings.

(3) Nationals or companies of a Contracting Party which, as a result of war or other armed conflict, revolution, state of emergency or riot, suffer losses in the territory of the other Contracting Party in respect of capital investments situated therein, shall not be treated less favorably by the latter than its own nationals or companies in respect of restitution, adjustment, compensation payments or other indemnities. Such payments shall be freely transferable.

(4) In respect of the matters regulated in this Article, nationals or companies of one of the Contracting Parties shall enjoy in the territory of the other Contracting Party most-favored-nation treatment.

Article 4.

Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of capital, of its proceeds and, in the event of liquidation, of the proceeds of liquidation.

Article 5.

If one of the Contracting Parties makes payments to its nationals or companies by virtue of a guarantee given for a capital investment in the territory of the other Contracting Party, the latter shall recognize, without prejudice to the rights of the first Contracting Party resulting from Article 11, the transfer of all rights of these nationals or companies to the first Contracting Party by operation of law or by legal action as well as the succession of the first Contracting Party in all rights (transferred rights), which the latter may exercise to the same extent as their former holder. For the transfer of payments to be made to the Contracting Party by virtue of the transferred rights, Article 3, paragraphs 2 and 3, and Article 4 shall apply *mutatis mutandis*.

Article 6.

(1) If the persons concerned have not entered into a different arrangement approved by the competent centers of the Contracting Party in whose territory the capital investment is situated, transfers under Article 3(2) or (3), Article 4 or Article 5 shall be effected without delay and at the exchange rate on the day of the transfer.

(2) Such quotation shall be based on the par value agreed upon by the International Monetary Fund and shall be within the margin of oscillation of one or the other part of the par value (parity) allowed by Article IV, paragraph 3 of the Agreement on the International Monetary Fund.

(3) If at the time of the transfer no conversion quotation within the meaning of paragraph (2) exists for a Contracting Party, the official quotation which that Contracting Party has fixed for its currency in relation to the dollar or other freely convertible currency or to gold shall apply.

(4) If no such quotation has been fixed either, then the competent centers of the Contracting Party in whose territory the capital is situated shall accept a conversion quotation which is fair and equitable.

Article 7.

(1) If legal provisions of one of the Contracting Parties or obligations under international law, now in force or future, which exist or will come into existence between the Contracting Parties outside this Treaty, result in a general or special regulation under which capital investments of nationals or companies of the other Contracting Party shall be accorded more favorable treatment than that provided for in this Treaty, such regulation shall prevail over this Treaty, insofar as it is more favorable.

(2) Each Contracting Party shall comply with any commitments it may have entered into with respect to investments of capital of nationals or companies of the other Contracting Party in its territory.

Article 8.

(1) The concept of "investments of capital" includes all kinds of property, and in particular, but not limited to

- a) ownership of movable and immovable property and other rights in rem such as mortgages, pledges or similar rights;
- b) shares in companies and other types of participations;
- c) monetary credits or benefits that have an economic value;
- d) copyrights, industrial property rights, technical processes, trade names and goodwill;
- e) public law concessions, including prospecting and benefit concessions.

A change in the form in which the capital is invested does not affect its nature as a capital investment.

(2) "Income" is that amount that corresponds to a capital investment for a given period as profit sharing or interest.

(3) "Nationals" are:

(a) for the Federal Republic of Germany: the Germans within the meaning of the Basic Law of the Federal Republic of Germany;

b) for the Republic of Colombia:

Colombians within the meaning of the Political Constitution of the Republic of Colombia.

(4) The concept of "corporations" designates

a) for the Federal Republic of Germany

all legal persons, commercial companies and other companies and associations, with or without legal personality, which have their seat in the territory of the Federal Republic of Germany and exist in law according to the laws, regardless of whether the liability of their partners or members is limited or unlimited and whether their activity is for profit or not for profit;

b) for the Republic of Colombia:

all legal persons, whether partnerships, associations or corporations and foundations, having their seat in the territory of the Republic of Colombia and existing in law under the laws, irrespective of whether the liability of their partners or members is limited or unlimited and whether their activity is for profit or not for profit.

Article 9.

Capital investments made before the entry into force of this Treaty by nationals or companies of a Contracting Party in accordance with the legal provisions of the other Contracting Party in the territory of the latter shall also be subject to this Treaty. The obligations of the Federal Republic of Germany arising from the London Agreement of February 27, 1953 on German Debts Abroad shall not be affected.

Article 10.

Each Contracting Party shall grant national treatment under the terms of the present Treaty on the basis of the fact that national treatment is granted in the same matters also by the other Contracting Party.

Article 11.

(1) Disputes concerning the interpretation or application of this Treaty shall be settled as far as possible by the Governments of the two Contracting Parties.

(2) If a dispute cannot be settled in this way, it shall be submitted to an arbitral tribunal at the request of one of the two Contracting Parties.

(3) The arbitral tribunal shall be constituted for each case in such a way that each of the Contracting Parties shall appoint an arbitrator; these two arbitrators shall designate by common agreement a chairman who shall be a national of a third State and shall be appointed by the Governments of the two Contracting Parties. The arbitrators shall be appointed within two months and the chairman within three months after one of the Contracting Parties has informed the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the time limits specified in paragraph (3) are not complied with, in the absence of other agreement, either Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of one of the two Contracting Parties or is otherwise unable to act, the appointments shall be made by the Vice-President. If the Vice-President is also a national of one of the two Contracting Parties or is otherwise prevented from acting, the appointments shall be made by the senior member of the International Court of Justice who is not a national of one of the two Contracting Parties.

(5) The arbitral tribunal decides by majority vote. Its decisions are binding. Each of the Contracting Parties bears the expenses of its member as well as those of its representation in the proceedings before the arbitral tribunal; the expenses of the chairman and other costs are borne equally by the two Contracting Parties. The arbitral tribunal may adopt other rules on costs. Otherwise, the arbitral tribunal shall regulate its own procedure.

Article 12.

The provisions of this Treaty shall remain in force even in the event of a dispute between the Contracting Parties, without prejudice to the right to take transitional measures, lawful according to the general rules of international law. Measures of this kind shall be abrogated at the latest at the time when the conflict ends, whether or not diplomatic relations have been re-established.

Article 13.

This Treaty shall also apply to the Land Berlin - with the exception of the provisions of number 8 of the Protocol concerning air navigation - as long as the Government of the Federal Republic of Germany has not made a declaration to the contrary to the Government of the Republic of Colombia within three months after the entry into force of this Treaty.

Article 4.

(1) This Treaty shall be ratified and the exchange of the instruments of ratification shall take place as soon as possible in Bonn.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for ten years and shall continue for an indefinite period unless it is denounced in writing by one of the two Contracting Parties one year before its expiry. After the expiration of ten years the Treaty may be denounced at any time, but it shall remain in force one year after the denunciation has been effected.

(3) After the termination of this Treaty, capital investments made up to the time of its expiration shall continue to be covered by the provisions of Articles 1 to 13.

DONE at Bogota, this eleventh day of June, one thousand nine hundred and sixty-five, in four copies, two in German and two in Spanish, each text being equally valid.

For the Government of the Federal Republic of Germany:

Ernst Ostermann von Roth

Dr. Bruno Töpfer

For the Government of the Republic of Colombia

Dr. Fernando Gómez Martínez

Protocol

Protocol

In the act of signing the Treaty on the Promotion and Reciprocal Protection of Capital Investments between the Federal Republic of Germany and the Republic of Colombia, the undersigned Plenipotentiaries have further agreed upon the following provisions which are to be considered as an integral part of the Treaty:

(1) Ad Article 1

Capital investments which, in accordance with the legal provisions of one Contracting Party, have been made in its territory by nationals or companies of the other Contracting Party, shall enjoy the full protection of this Treaty.

(2) Ad Article 2

a) As an activity within the meaning of Article 2(2) shall be considered especially, but not exclusively, the administration, employment, use and development of an investment of capital. Discriminatory treatment in the procurement of raw and auxiliary materials, energy and fuels as well as means of production and operating resources of all kinds, hindering the sale of products at home and abroad, and all measures having similar effects shall be regarded in particular as less favourable treatment within the meaning of Article 2(2). Measures to be taken for reasons of public safety, public order, public health or morality shall not be considered as less favorable treatment within the meaning of Article 2.

b) Article 2, paragraph 2, shall not apply to entry, stay and employment as a worker.

(3) Ad Article 3

The provisions of section 3 para. 2 shall also apply to the transfer of a capital investment into public ownership, its subjection to public control or similar public sector interference. The concept of expropriation includes the deprivation or limitation of any right over an asset which alone or together with other rights constitutes a capital investment.

(4) Ad Article 4

As "liquidation" in the sense of Article 4 is also considered a disposal that is made for the purpose of abandoning the capital investment in whole or in part.

(5) Ad Article 6

a) A transfer made within a period of time normally necessary for observing the formalities of the transfer shall be deemed to have been made "without delay" within the meaning of section 6(1). The time limit begins at the time of submission of the corresponding request and the Contracting Parties shall take all necessary measures to ensure that this time limit does not exceed 6 months.

b) It is understood that the rule relating to change, contained in article 6, paragraphs 2 and 3, shall apply only if there is only one change.

c) When, through the Colombian foreign exchange system, the entry of a capital investment within the meaning of this Treaty has been effected at an exchange rate different from the official exchange rate for current operations, an exchange rate no less favorable than that which would be applicable on the day of the transfer to the entry of an analogous capital investment shall be applied to the transfer pursuant to Article 3, paragraph 2 or 3, Article 4 or Article 5, provided that on the day of the transfer there is no single exchange rate.

(6) Ad Article 8

(a) The proceeds of a capital investment and, in the case of its reinvestment, the proceeds thereof, shall enjoy the same protection as the capital investment.

(b) Without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authority of the Contracting Party concerned shall be considered in particular as a national of one of the Contracting Parties.

(7) Ad Article 11

In connection with an investor's claims arising out of this Treaty, and in accordance with the general principle of international law, recourse to the arbitral tribunal may be had only when, taking into account the principle of legal equality of nationals and foreigners, domestic legal remedies have been exhausted, the denial of justice in this case being equivalent to the exhaustion of such remedies.

(8) The Contracting Parties shall guarantee the free choice of means of transportation for goods and persons related to the development of this Treaty.

DONE at Bogota, this eleventh day of June, one thousand nine hundred and sixty-five, in four copies, two in German and two in Spanish, each text being equally valid.

For the Government of the Federal Republic of Germany:

Ernst Ostermann von Roth

Dr. Bruno Töpfer

For the Government of the Republic of Colombia:

Dr. Fernando Gómez Martínez

Exchange of Letters

I. Bogotá, June 11, 1965

Mr. President:

For the purpose of facilitating and encouraging the realization and development of capital investments of German nationals or companies, the Republic of Colombia will grant to German nationals who, in connection with capital investments of German nationals and companies wish to enter the Republic of Colombia, remain therein and exercise a profession as workers, the necessary permits provided that reasons of public order and safety, public health and morality do not oppose them.

I take this opportunity to reiterate the sentiments of my highest and distinguished consideration.

Dr. Fernando Gómez Martínez

To His Excellency

Dr. Bruno Toepfer,

Head of the Economic Mission of the Federal Republic of Germany

The City

Bogotá, June 11, 1965

Mr. Minister:

I have the honor to acknowledge receipt of your letter of today, the text of which is as follows:

"For the purpose of facilitating and encouraging the realization and development of capital investments of German nationals or companies, the Republic of Colombia will grant to German nationals who, in connection with capital investments of German nationals and companies wish to enter the Republic of Colombia, remain therein and exercise a profession as workers, the necessary permits provided that reasons of public order and safety, public health and morality do not oppose them.

I take this opportunity to reiterate to you the sentiments of my highest and most distinguished consideration."

Please accept, Mr. Minister, the assurances of my highest consideration.

Dr. Bruno Toepfer

To His Excellency

Dr. Fernando Gómez Martínez

Minister of Foreign Affairs

The City

II. Bogotá, June 11, 1965

Mr. Minister:

In the course of our negotiations on the conclusion of a Treaty between the Federal Republic of Germany and the Republic of Colombia for the promotion and reciprocal protection of capital investments, the Colombian Delegation has stated that Article 30, paragraph 4 of the Colombian Constitution provides for the possibility that for reasons of equity, in special cases expropriation without compensation may be decreed by law. The Colombian delegation drew attention, however, to the fact that such an exception could practically only be considered in the case of expropriation of part of a piece of land for the execution of public works involving a valorization of the remaining property. To which the German Delegation noted that Article 3, paragraph 2 of the Treaty in this case does not exclude the possibility that in connection with the compensation for expropriation, and in consideration of the advantages granted, a compensation admissible under the legislation in force may be made.

Please accept, Mr. Minister, the assurances of my highest consideration.

Dr. Bruno Toepfer

To His Excellency

Mr. Fernando Gómez Martínez

Minister of Foreign Affairs

The City of

Bogotá, June 11, 1965

Mr. President:

I have the honor to advise you of receipt of your kind communication dated today, the text of which is as follows:

"In the course of our negotiations on the conclusion of a Treaty between the Federal Republic of Germany and the Republic of Colombia for the promotion and reciprocal protection of capital investments, the Colombian Delegation has stated that Article 30, paragraph 4 of the Colombian Constitution provides for the possibility that for reasons of equity, in special cases expropriation without compensation may be decreed by law. The Colombian delegation drew attention, however, to the fact that such an exception could practically only be considered in the case of expropriation of part of a piece of land for the execution of public works involving a valorization of the remaining property. To which the German delegation noted that Article 3, paragraph 2 of the Treaty in this case does not exclude the possibility that in connection with the compensation for expropriation, and in consideration of the advantages granted, a compensation admissible under the law in force may be made.

Please accept, Mr. Minister, the expression of my highest and distinguished consideration."

I take this opportunity to reiterate the sentiments of my highest and distinguished consideration.

Dr. Fernando Gómez Martínez

To His Excellency

Dr. Bruno Toepfer,

Head of the Economic Mission

of the Federal Republic of Germany

The City

III.

Bogotá, June 11, 1965

Sir Minister:

In the course of our negotiations for the conclusion of a Treaty between the Federal Republic of Germany and the Republic of Colombia on the promotion and reciprocal protection of capital investments, the German Delegation has explained that, according to the provisions in force, the Government of the Federal Republic of Germany assumes guarantees for private capital investments abroad for the purpose of insuring the non-economic risk, in connection with which, among other factors it is of importance whether the capital investment deserves to be encouraged. In order to check this, a review procedure is carried out before a guarantee commission. The Government of the Federal Republic of Germany is prepared to take into account in this review procedure the opinion of the competent authorities of the Colombian Government as to the suitability of the planned capital investment.

Please accept, Mr. Minister, the assurances of my highest consideration.

Dr. Bruno Toepfer

To His Excellency

Mr. Fernando Gómez Martínez

Minister of Foreign Affairs

The City